

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on March 5, 1999 at 3:04 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: Sen. Gerry Devlin,

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 345, HB 352, HB 571,
2/23/99
Executive Action: HB 571

HEARING ON HB 345

Sponsor: REPRESENTATIVE BOB RANEY, HD 26, LIVINGSTON

Proponents: David Burch, Jefferson County Weed Supervisor
Marty Malone, Park County Extension

**Lorna Karn, Montana Farm Bureau
Ted Coffman, Madison County Commissioner
Tony Schoonen, Weed Trust Fund Board**

Opponents: **Mike Foster, Montana Contractors Assoc.
Ed Maronick, Maronick Construction
Paul Thompson, Gilman Construction
Van Hildreth, Empire Sand & Gravel
Tim Ravndal, Self**

Opening Statement by Sponsor:

REPRESENTATIVE BOB RANEY, HD 26, I'm bringing you one of the major weed bills this session. This bill is going to require gravel and sand operations that have anything to do with state and federal highways to use gravel, sand and materials in construction and maintenance that come from sand and gravel operations certified weed free by the counties. This started out complicated but we worked up a whole group of amendments to make this acceptable to the Transportation Dept. It's down to almost no fiscal impact.

This bill is wanted by all the weed districts and Extension Agents from one end of Montana to the other. A big share of the weeds move along whatever our type of transportation corridor is. Whether it be roads or railroads or trails in the woods, that's the best place to move weeds. This is a great way to stop a significant amount of movement of weeds along our major routes in Montana. You'll notice that any sand and gravel operation moving over 10,000 cubic yards will have to develop a weed plan that is acceptable to the county.

Proponents' Testimony:

Dave Burch, Jefferson County Weed District Coordinator, read written testimony. **SEE EXHIBIT (ags50a01).**

Marty Malone, Park County Extension Agent, sees this as an important bill to protect the private landowners along the highways. In Park County, we're seeing knapweed and mullan weed coming directly from transportation sources, mainly cars. Lots of landowners are spending hundreds of thousands of dollars every year to protect their land from weeds that came from the right-of-way.

Lorna Karn, Montana Farm Bureau feels this is a good piece of legislation for the reasons you have already heard.

Ted Coffman, Madison County Commissioner, We have a lot of present and proposed road construction in Madison County and urge your support.

Tony Schoonen, Weed Trust Fund Board, Governor Stephens appointed me to the Weed Trust Fund Board many years ago, so I know the importance of controlling weed and understand there's a lot of different ways they are spread. This bill is a step in the right direction.

{Tape : 1; Side : A; Approx. Time Counter : 3.08}

Opponents' Testimony:

Mike Foster, Montana Contractors Assoc., This bill was tabled in the House of Representatives for awhile. Unfortunately, some amendments breathed new life into it. It's important to recognize the importance of the weed issue in Montana. **SENATOR MESAROS** has gone out of his way to try to figure out a way to wage a war on weeds. The questions we always have to deal with are, what is the right way to attack weeds and who is going to pay for it.

By the testimony you've heard, contractors are out there with a gravel pit letting weeds run rampant, growing everywhere with no control, never spraying a weed. Contrary to what you have heard, gravel pits of contractors are not the only source of weeds in Montana. There's this law called the County Weed Control Act. It's part of our statutes now. **SEE EXHIBIT (ags50a02)**. Take a look at what it requires in the way of controlling weeds in Montana. When you listen to the current restrictions contractors have, you'll learn this bill is unnecessary.

The most gravel pits in Montana are probably government owned. When you hear what the contractors have to say about the requirements they have to live under regarding weed control, I think you will ask yourself about the government entities that have gravel pits. What are they doing to control weeds? A lot of time, effort and money goes into making sure weed concerns are addressed.

Ed Maronick, Maronick Construction, I'd like to give a brief description of what we're required to do to get an open pit gravel permit right now. There are currently laws in place, rule making we have to abide by. When we go to DEQ to file a permit,

they give us about a ten page document to fill in. There are all kinds of information on it. Passed out copies of one page. I point your attention to item 13. **SEE EXHIBIT (ags50a03)**. We have to commit to doing that currently. Once this is turned into DEQ, DEQ notifies the Weed Control Board in the respective counties. If the Weed Control Board has a problem, they notify DEQ who tells us there's a problem you have work out with the Weed Control Board or the permit will not go through. This happened to us recently in Lewis & Clark County. We submitted one the Lewis & Clark County Weed Control Supervisor didn't like it. He contacted DEQ who in turn told us our permit wouldn't go through. We worked out a weed control plan he was satisfied with. That is now part of our open cut mining permit. It's also covered by our bond which requires us to reclaim that permit. We feel the current system works. In talking to some of the weed control people, there might be a communication problem between DEQ and the Weed Board. Maybe that's where this should be addressed, but not with this bill.

Paul Thompson, Gilman Construction, We're a highway construction company based in Butte. We're all in favor of fighting weeds, but oppose the way this bill tries to do it. This bill puts the permitting requirement in the hands of the county Weed Boards. I called about a half dozen counties in the area we work in and asked a few questions on what their staffing levels were and how often their Weed Boards met. Some counties have active programs with a full time weed supervisor and a weed board that meets once a month. Under those circumstances I think it would be possible to get hold of somebody and get the permit you need. Some of the other counties either have no weed board staff or only have a part time person. It's common to only have a person for several months in the summer. Some weed boards told me they only meet four times per year because that's the minimum allowed by law.

When we get into the time frames contractors have to work with, it's really difficult. In the highway construction program, you have five weeks from the time the job is awarded until contract time starts running. I think that's a requirement of the Federal monies. The first thing that normally has to happen on a highway construction project is the crushing. You need to have the gravel in order to do your paving or whatever you're going to do. That five week period is really intense. During that time we make application to DEQ. DEQ is under a requirement by statute to process that application within 30 days. The 30 days fits into the time frame we have from award of project and start of contract time. This bill requires you have an approved weed plan from a county Weed Board before you even make application to DEQ. It has to accompany the initial application. If you take the five weeks, which is thirty five days less the thirty days that

DEQ has to act, that leaves a 5 day window. This bill doesn't put the county Weed Boards under any kind of time frame in which to respond. It could delay these highway jobs.

In the House hearing there was testimony that approximately half of the county weed boards have full time staff people. That means half of them don't. The real concern comes in the counties that don't have staff people and have a volunteer weed board that may meet as infrequently as four times a year. I don't see how you could contact the right people, get the site reviewed and get the permit within the tight time frames we have.

Section 1, paragraph 2, requires a weed plan from the county where the material will be used. Often you have a gravel pit in one county and your road job is in a nearby county. Maybe the road job is actually in two counties. This bill would have one county managing a gravel pit weed plan in a neighboring county. If the road crossed into two counties, you would have to contact them both and get an approved weed plan from each. If their weed plans weren't the same, you're having to work with two counties to manage the same site. I don't think it's workable.

Every pit we enter, and we enter about eight to ten new gravel pits a year, has a weed plan approved by DEQ. We furnish bonding to back up any action that has to be taken. We oppose this bill. We don't oppose fighting weeds; we spend a lot of money right now fighting weeds at the gravel pits we operate. There's no tight time limit and this would have the effect of delaying work on highway projects.

Van Hildreth, Empire Sand and Gravel, As stated earlier, one of the biggest reasons we're opposed is a time delay. We're already contacting the counties about their zoning compliance plan, and at the same time we ask for their Weed Control Policy. I have an example here and I'm not picking on this county; it just happens to be the latest example of a county that doesn't have anything set up. **SEE EXHIBIT(ags50a04)**. It would be very hard to permit something when the people aren't there to approve or disapprove.

We're responsible for weed control in our gravel sources. The bill states that anything used for highways, through State or Federal Funds, is covered. There's a lot of county sources out there that wouldn't necessarily be covered under this. To show you that we are covered under weed control, I have a reclamation bond release. **SEE EXHIBIT(ags50a05)**. Any reclamation plan we have has a bond that goes with it. On the second page of this, you'll see they hold back our bond because of weed control. It's already in force. In Montana, Title 7, Chapter 22, the County Noxious Weed Act is pretty well covered throughout the counties.

We're doing the best we can to control weeds. We spend money as well on weed control.

This bill says to use only materials free of noxious weeds in construction and maintenance of highways. It may be difficult to try to find a gravel source free of noxious weeds every time on every job, every location. In the western part of the state, you'd probably end up hauling your gravel from the eastern part of the state. It's improbable that we can actually find a gravel source, even if it's never been disturbed before, that's entirely weed free. In the bidding process, the contractors have to find a source; the DOT doesn't set it up for us. It's hard enough to find a source of quality material with the right quantity of material to fit the job.

I don't believe this bill would cut out the weed spread of any state. We've got everything from hiking boots to four wheelers going out through the toolies and you get a lot of spread that way. Where I'm from by Dillon, there isn't a MDOT transportation pit for probably thirty miles from where I grew up on a ranch. There's knapweed starting around our place now and that wasn't the case ten years ago. The right direction might be to get all the counties together to accept one plan that can fit for all, whether it's a gravel source for MDOT or federal highway work or a source for local concrete aggregate.

Tim Ravndal, Montana does not need another slap in the industry by adding laws on top of laws we already have to take care of weed control.

{Tape : 1; Side : A; Approx. Time Counter : 3.28}

Questions from Committee Members and Responses:

SENATOR TESTER On line 19 of the first page, Federal aid or State highways. Does this mean it would also apply to State and County pits?

REP. RANEY It applies to any pit or pile where those materials would be used on State or Federal highways.

SENATOR TESTER Is the secondary road that whips by my house considered a state road?

REP. RANEY Many of those are. Many are county roads, so it would be tough for me to tell you.

SENATOR TESTER One of the concerns brought up by the construction people was extending these time frames out and the fact that in a lot of the counties, there was no staff and no weed plan.

Dave Burch We rolled that back to 2001 for any new pits so they're going to have to have this plan on them. They are right in that a lot of weed districts don't have personnel. **SENATOR MESAROS'S** bill will try to get some full time people so we can implement the Noxious Weed Control Act the way it needs to be done. It doesn't do a lot of good for the 30 counties that already have weed districts with personnel ready to do something to have to wait for the other 26. We need legislation to help us do our job.

SENATOR TESTER Do you have full time personnel in your county? How long would you anticipate approval of a weed plan from the time it was submitted?

Dave Burch True, we do have a weed law that says we can do this. But none of it gets done through Department of Environmental Quality, Dept. of Transportation or contractors. We're trying to get this plan in process so that we can get it done faster. I could be out there within two days, or a day even to work on this program. We can do some mitigation in that management plan that would say scrape the weeds off this gravel pit and then we'll let you go ahead and mine that gravel. Right now, we do not get that. As supervisor in Jefferson County for two years, I've never had a contractor or DEQ come to me and ask about a gravel pit. Never. I've been in this business fifteen years and it's like pulling teeth when it comes to that type of thing.

SENATOR TESTER We were given two documents, one by Ed Maronick and the other by Van Hildreth that talked about reclamation and weed seeds in the gravel. Is there any part of the statute that talks about weed seed in the gravel?

Van Hildreth Typically, you have no free gravel. You usually have to strip off a certain amount of top soil, sometimes overburden. Once you actually get to the gravel you could be any where from a foot to five feet below surface where the weed seed would be. We're required to strip top soil, strip overburden separately, put both in separate piles, and then mine the gravel.

SENATOR MESAROS This handout was distributed as part of the permitting form on weed control. Not every county has weed districts or full time weed supervisors. How is this being

implemented through the permitting structure we currently have without a county weed management plan?

Paul Thompson In our permitting process through DEQ, there's a section on weed control for the site. We have a standard weed plan that we've used on many sites before. We make minor adjustments in that plan to fit the specific site and submit it to DEQ. If there's a problem, they call us and approve it as part of the bond for that plan. DEQ reviews our gravel pits sites roughly annually, sometimes a little more often. If a DEQ person goes to the site, our office sends a person, they meet on site and talk about any problems. If there's a weed problem, that's addressed and we either have the weeds cut or sprayed. There are weed plans and weed control being done right now. The rub here is it's being done through our reclamation permit process with DEQ and not through the county weed boards.

SENATOR MESAROS There must be a problem with some gravel pits that are infested with some noxious weeds to forward this legislation. Is the problem in communication between DEQ and the permitting, or exactly where is it? This language is pretty clear; they are to do this, but evidently it's not being done.

Dave Burch No, it's not being done and this is our biggest problem. We control the weeds in that county. DEQ should not have a controlling part in that. It's up to the weed districts to approve those plans and for the most part we do not see them. We're trying to get this bill in so it opens the line of communications to make DEQ come back to the counties, which they don't do. And open communications between the contractors and the weed districts, where the whole problem lies in the first place.

SENATOR MESAROS Some of the opponents identified a legitimate concern as far as a county plan that needs to be approved before it goes to the permitting process, where many of the counties don't have weed supervisors or adequate staff to provide this. It could lead to delays in the permitting process.

REP. RANEY The effective date of this bill is 2001. You understand the counties want the roads built. The counties aren't opposed to reconstruction or construction of roads. This gives two years for state and weed control boards, Dept. of Transportation and contractors interested in working with those counties to find out how to make sure your weed board sends someone to look at the site. This could be a county employee or someone the county contracts with to check the site. We put the

two year delay so that everybody would be able to get together and understand the requirements.

SENATOR MESAROS Is this contingent on another bill passing?

REP. RANEY No, it's not.

SENATOR HOLDEN I was looking at the current county weed control statutes on the books. I was looking at 7-22-2102 which says a weed management district shall be formed in every county of the state and shall include all the land within the boundaries of that county. The next page talks about powers and duties of the board and says the weed board shall establish management criteria of noxious weeds on all land within the district. It seems to me what you want to do is already in the law.

REP. RANEY As you can see, you have the Montana State Weed Board which represents all the district weed supervisors of the state who say the present law doesn't work. This is their plan because presently it doesn't work. The contractors failed to tell you when they apply to open a pit, all they have to do is send the request to DEQ and go to work. That request to DEQ may or may not get back to the county. The county supervisors often find they're traveling down a road in their county and a new pit is opened up. They have yet to hear from DEQ about it. The machinery is already in the staging area and may well be sitting in a knapweed or leafy spurge patch waiting to go to work. The operation is underway before the county weed supervisors even know. All this says is they must form the weed district; it doesn't say how the weed district will function.

SENATOR HOLDEN I didn't go through a, b, c and d for how it functions, but it seems like the board in that county has been given an incredible amount of power to make sure that all areas within the boundaries of that county are in compliance with the state statutes.

Dave Burch We do have some powers to do that stuff. That bill says the commissioners shall create a weed board, which I'm sure they do right now in all 56 counties. You go down a couple sentences and it says "they may hire a supervisor" and "they may fund that weed district". It doesn't get done in a lot of cases and I have problems with this weed law. I would like to see it more stringent. People look at this weed law as a joke and we're out there trying to enforce it. We are trying to bump up our level of professionalism and management skills and trying to get a better overall plan for weed control in Montana. This is the first step.

Paul Thompson I'd like to refute the statement that all a contractor has to do is send an application to DEQ and he can go to work in the gravel pit. That's incorrect. We submit an application, DEQ reviews it, and a representative from DEQ meets a representative of the contractor on site. They walk the site and look at the problems. The contractor is required to furnish a bond and there are formulas for the amount of the bond. Right now the bonds we furnish to DEQ are averaging about \$15,000 to \$17,000 per site. That bond covers not only weed control but also the other reclamation of the site, slope of the pit, putting the topsoil back on, seeding. We can't go to work until the plan has been approved, the bond accepted and approved and we've received a signed reclamation contract from DEQ. This bill would amount to another unfunded mandate for many of the counties who don't currently have the staff.

CHAIRMAN JABS You're saying you don't start your open pit until DEQ has looked at it.

Paul Thompson We can't move a rock until we're completely done with the permitting process and have a signed reclamation permit.

CHAIRMAN JABS That's approved but it doesn't mean it's looked at, though.

Paul Thompson In the permitting process, they have met us on site, gone over all the aspects of the plan we submitted. Everything happens before we can begin any work.

SENATOR HALLIGAN I request when we do Executive Action, we get DEQ in here so we can get some answers to the questions.

CHAIRMAN JABS On page 3, applicant for contract, before the applicant can even bid on a job he has to have a management plan. You have to have a site picked out ahead of time.

Mike Foster I think you're correct. I think you could make that extension all right.

CHAIRMAN JABS Do most contractors have their gravel pit picked out ahead of time.

Mike Foster Yes, they do. They have to make arrangements about where they're going to get the gravel from, otherwise they will not be able to put in a realistic bid. They have to do that legwork prior to submitting their bid, as to where it's going to be, what the gravel potential is for that particular spot.

SENATOR TESTER If that's the case, wouldn't it make good sense
(TURN TAPE, question missed)

Mike Foster You're assuming you're going to win the bid.

Ed Maronick There's actually two different contracts. The contract you're talking about bidding on is a contract with MDT, a contract for construction of a highway. The contract they're talking about is applying for a open cut mining permit or contract with DEQ, totally unrelated. No, you would not have to have this before the project.

SENATOR TESTER Do you source your gravel before you make the bid?

Ed Maronick We will have a site located the vast majority of the time, maybe multiple sites. We will not get an open cut mining permit before hand but we will know approximately where it's coming from.

SENATOR TESTER Wouldn't it make sense to go to the county, if this was enacted, and get the plan established even before you did the bid to make sure that you could comply with their plan?

Ed Maronick Just the sheer volume would probably rule that out. Some of the people behind us would bid on as many as six or eight projects per month.

CHAIRMAN JABS Suppose you get a contract in August and the weeds are already seeded and gone. It would be too late to control. You have to have a management plan to control weeds on that gravel pit you're going to use.

Ed Maronick This will amend the open cut mining act, this will not affect the contract through MDT that you will be bidding on. It's two different sections of law.

{Tape : 1; Side : B; Approx. Time Counter : 3.52}

Closing by Sponsor:

REP. RANEY The last page of the bill, sections 3 and 4, requests the Dept. examine the area to be mined. The Dept. sends somebody to examine the area and make recommendations regarding reclamation, not recommendations on a weed management plan before the pit is opened. They're spreading the weeds along the very roads they're working on. They're telling you they're in a hurry and therefore you should let them spread weeds.

The single biggest economic and environmental threat Montana presently faces is the spread of noxious weeds. It affects agriculture, all landowners, our wildlife, fisheries, and our whole way of life. This is a simple bill that's not going to cost much money. It may cost the county \$50.00 to send somebody to look at a site but I doubt it's even going to do that. We gave until 2001 for everybody to recognize we're not allowing them to spread weeds. An operation permit for a pit does not mean the pit is weed free. If you want an operation to be weed free before they start, you need this bill.

I told you about counties finding operations underway on a site with weeds on it. I'll give you the prime example why Sheill Anderson and I signed this bill. About 18 months ago, people in Park County became aware DOT was going to resurface 25 miles of highway in southern Park County in a noxious weed management zone where we are trying to stop the spread of spotted knapweed. We're somewhat successful in this fight. We became aware of a couple sites that were potential sources of gravel for this operation. Six months prior to when this contract began, we started calling DOT and said the sites you are going to use are heavily infested with spotted knapweed and numerous other noxious weeds. We want you to clean those weeds up before you move machinery in. They answered those sites would come under a noxious weed plan before they moved machinery in. Suddenly my phone is ringing off the hook. They'd moved all their equipment onto the site, they're moving dirt and getting ready to spread it. It's all over the place now. It's all over their machinery, in the gravel they're using and away they went for 25 miles, spreading a brand new infestation of spotted knapweed in southern Park County that we had pretty well cleaned up. We could not stop that under present law.

To kill this bill would mean proceeding with existing law.

SENATOR MESAROS has the major weed bill of this session. His bill will put money into every county in Montana so they will have the money to do this inspection promptly. I believe **SENATOR MESARO's** bill is going to pass in one form or another. I can't imagine we're not going to do something serious about stopping the spread of noxious weeds.

People who are in a hurry are opposed to this. They say gravel pits and highways are not the only source and that's true. We're only addressing this source. These people have come from across Montana to tell you that we need help. Part of the bidding process is they have to find a source of gravel before they can put in a good bid. When they look at those sources, wouldn't they be able to recognize there's noxious weeds present on the place.

Weeds are different everywhere in Montana. In the west, it's spotted knapweed; in the east, it's leafy spurge. Somewhere else it might be hounds tongue. Each county has a significantly different problem than the next county may have. That's why the counties want you to bring it to them so they can have some influence over what is taking place in their counties where their landowners are the ones putting in a fortune to fight weeds brought to them by roads. It isn't fair to allow private landowners and our public lands to be devastated by a project that can be made weed free. But that's what we're doing presently.

I don't accept this time frame thing. If we had said July 1, 1999 it would have been difficult for everyone to get organized. We gave them 29 months to get ready for this. We know they can adjust their operations to be prepared for it. The State Weed Board and Extension Agents came here to tell you that we have to make them do it because they're not doing it now. What happened in Park County this summer is ample proof. Everyone is satisfied and knows this is important except those people who are afraid it may get in the way of how they're presently conducting their business. We're going to make them change how they conduct their business so we get a better grip on noxious weeds in Montana.

{Tape : 1; Side : B; Approx. Time Counter : 4.02}

HEARING ON HB 352

Sponsor: REPRESENTATIVE MATT BRAINARD, HD 62, MISSOULA

Proponents: Bill Fairhurst, Public Land Access Assoc.
Tony Schoonen,
Bill Holdorf, Skyline Sportsmen's Assoc.
Leroy Mehring, Skyline Sportsmen
Sam Babich, PLAAI
Jim Ravndal

Van Jamison, Montana Wildlife Federation
Mike Collins, Montana Independent Miners
Bob Bugni, Prickly Pear Sportsmen
L. F. Thomas, Anaconda Sportsmen
Stan Frasier, Montana Wildlife Federation

Opponents: John Mundinger, Montana Stock Growers Assoc.

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, HD 62, This bill is fairly simple, ensuring continued access across public land to private and public land. In Section 1, page 1, line 10, we're dealing with the ability of a private landowner who has traditional access across state property be able to purchase a nonexclusive easement on that right-of-way to get some kind of proper right. South of my district there are people who have a piece of property they farm. They have to cross about 300 feet of state land to access it from the highway. They cannot get a loan on that property because the State will not give a permanent easement. They have a large piece of land they've worked, but in a sense it's valueless even though they are taxed on it, because they are not guaranteed access to that property. Hopefully this section would provide a vehicle for that type of easement.

Section 2 deals with the same situation on county land. Section 3 is the abandonment of county roads. On page 2, amended into the existing statute we have "the board may not abandon the county road or right-of-way used to access public land unless another public road or right-of-way provides the same access". In Section 4, the board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment. This arises from a situation in the Bitterroot where a road that accessed a state school section was abandoned by the county and cut off access to the property owner back on that road.

Our roads and highways are our basic economic infrastructure. Every part of the world, if they want to develop economically, has to put in an adequate system of transportation for access to work and use the land. Hopefully by passing this bill, we'll keep a number of roads open when there's a temptation to close them because of some of the economic problems the counties now have and maybe a lack of interest. In western Montana, we're seeing a destruction of federal roads and closure of federal property, which is public land. I hope we would be able to keep our county roads open to the juncture spots so people would be able to access that resource. In the event we can perhaps force the Federal Government to keep those roads open, we'll be able to continue the timber management. We'd be able to keep our county roads open as well.

Proponents' Testimony:

Bill Fairhurst, Public Land Access Assoc. Our goal is to get the public to their public lands. There is an immediate need to ensure continued access across public land to both private and public lands. The very irony of the present access situation is

that numerous private landowners are coming to appeal for information and support in gaining access to their private lands.

I thought of a couple names on the way here who have contacted our organization regarding access to private lands. Mr. Chuck Alkire and his daughter Sherri of Big Timber have 2,000 acres of lands in the Big Timber area. The road goes through a state school section and they have been denied access through that section. That road has been in existence since the 1800's. Prescriptive right addresses the problem across private lands but not across public lands. Another name is Nancy Bushaw of Townsend. She has 160 acres in the 16 Mile Creek area. On the east side of her is Ted Turner and his ranch, on the west side is our landowners. The road goes through state school trust section and again, she is being denied access. She has been broken financially by the legal cost of trying to get to her private lands. This bill, I believe, addresses some of these problems.

Public lands are our shared estate, but we are all robbed of this commonwealth if the road that gives us entry is blocked. This is occurring not only in Montana but throughout the great American West. You'd be surprised at the number of phone calls from people who contacted me not only in this state but in other states trying to get access to their public lands. **HB 352** gives recognition to the fact that in addition to private property rights, there are also public rights and resources held in common that need to be articulated and understood. Section 3, paragraph 3 we very strongly support.

While I was president of Public Land Access we became involved in three litigations. The Cherry Creek Road out of Big Timber gave access to 15,000 acres of pristine U.S. Forest Service Lands. **SEE EXHIBIT (ags50a06)**. Access to that land was recently cut off by two individual property owners who are very influential men on Wall Street. This was an abandoned county road. Section 3, paragraph 3 addresses that problem. We will have to go through court in order to open that road at the present time. A road in Powder River accessing 15,000 acres of BLM land was cut off. The BLM now is trying to bring access through another road. The Copper City road ten miles north of Three Forks accesses an old abandoned mining camp and a couple thousand acres of BLM land. A county road goes right to that sight. The landowner took it upon himself to chain and lock the gate on a county road. Last week we met with the Broadwater County Commissioners and brought in the Bureau of Land Management. We're trying to work out a cooperative agreement where the Bureau of Land Management will take over an alternate route which is also an abandoned county road to give access.

It's a good bill that addresses the problems of access, not only to public lands but to private lands.

Tony Schoonen, Coalition for Appropriate Management of State Lands, Secretary/Treasurer of Public Land Access, also speaking for the **Billings Rod and Gun Club** and the **Southeastern Sportsmens Group**. I want to make sure their concerns for the support of this bill is felt. A man from Butte has a small acreage of property next to Turner's property in the Snow Crest. It crosses two sections of state land and he's been unable to work out a deal with DNRC to gain access to his property.

Wealthy out-of-staters are coming into the state. They don't seem to recognize the needs of private property owners or public land users. It's important we as recreational groups and you as the legislator work a way we can keep people on county roads to their public lands.

We had some concerns with that on **SB 171**. We wrote to the Governor because we were trying to deal with identifiable boundaries and were concerned because there's a lot of land that doesn't have any boundary markings. The Governor wrote back and said "Director Graham has committed to working with land management agencies to mark access to existing public lands to reduce potential for trespass. Retaining access to public lands is a growing problem and must be a priority in the future." I think we all realize as more roads are blocked off, you're pinching people into smaller areas. If we keep our county roads open, at least we can spread those people out over their public lands. **SEE EXHIBIT (ags50a07)**, written testimony.

Bill Holdorf, Skyline Sportmens Association, Anaconda Sportsmens Club, told about a situation he ran into on a county road. It's still open just because he had enough nerve to get involved. Most of you are familiar with Clarks County Dam south of Dillon. I've hunted and fished there for years, so I'm familiar with the roads. Around the back of the dam is a road that accesses all the way around the dam. Some people with 20 acres put a fence across the edge of their property. On the other end, they wired a cattle guard shut. The cattle guard is on Bureau of Reclamation land. That's the old county road. They had sheep and a few cows and didn't want anybody around there. I went to the Bureau of Reclamation and also to the County Commissioners. With a lot of red tape, we got it opened up. The Bureau people cut all the wires off that cattle guard. Now it's still on public land but they do have a gate in front of the cattle guard and one on the other end. I'm not opposed to that at all because I'm allowed to go through it. My main purpose of going in there

is to hunt geese. The only way I could get in there with my decoys was to use that road. This is a situation that never would have occurred if we had something like this bill to protect us.

Leroy Mehring, Skyline Sportsmen Association, has had several dealings in the past few years with County Commissioners on proposed road closures. One was in Madison County called the McHessor Creek Road. Most of the road goes through private property but it accesses about 24,000 acres of BLM and state land. At one time in the past there had been litigation over it. The Montana Supreme Court, in July 23, 1963 declared a 60 foot county right-of-way from McHessor Creek to the top of the Ruby Mountains. The landowner who owns property on both sides petitioned the County Commission to abandon the road. Because of this earlier decision the road wasn't abandoned. The sportsmen and public had to make a concession it would be only foot and horseback up this 60 foot right-of-way to get to the Federal and State lands.

We have one in Jefferson County, McCarty Creek road. The County Commissioners were petitioned by three landowners to abandon the road. The County Attorney assessed everything and said it was a county road. The county abandoned part of this road. The two landowners on the part they didn't abandon are having a fit over it. It went to Judge Davis's court and Judge Davis said it was a county road. He read a part of a letter from Forest Service to Jefferson County Commissioners. **SEE EXHIBIT (ags50a08)**.

Sam Babich, Butte, has been to many hearings and many counties over this exact problem. This bill will alleviate some of the problems we have. I've traveled roads in the upper Big Hole, Jefferson County, Madison County, Beaverhead County that I've traveled since I was a kid. In the last five years, I have found numerous roads that have been locked by private landowners. With legislation like this, we have some power to get these roads open under a legal maneuver. There isn't a month goes by that you don't read in the paper where this or that road has been challenged and another road has been locked up. With legislation like this we have a law behind us to guarantee us the rights to use our public lands. In the fuedal days, it was lords and the rich that used the lands and the public was locked out. Nowadays it's the rich that are locking normal citizens out. We need legislation like this.

Tim Ravndal, Townsend, Over the years I've seen more and more public and private roads being shut down, almost on a day to day basis. I request you support this bill and give us a foothold to

help keep some of the roads we've had historically keep them open so we can use them, and most importantly, so future generations can use these roads to access our public lands.

Van Jamison, Montana Wildlife Federation, It comes as no surprise to you that the Montana Wildlife Federation is very anxious to maintain public access to public lands. We believe **HB 352** takes some important steps towards achieving that goal.

Mike Collins, Independent Montana Miners, Montana Mining Assoc. stand in support of this bill. It's a component part of a process we are trying to implement in maintaining our implied easements and our right-of-ways to both Federal and into and through State land. This has a historic background. Montana did not become a state until 1889. There were a lot of people in the Territory of Montana prior to 1889 for primarily two purposes. Number one was mining. As a result of a 1866 law, right-of-ways were created all through the Territory, prior to the land selections being made to the State of Montana. In a lot of cases, these implied easements and these right-of-ways fell within those land selections that were made for the State of Montana, the school sections and sections for other purposes.

Private property owners are being denied access due to changes of ownership and changes in land management regimes and schemes. Contemporary laws have pushed history into the background and covered up the history where these right-of-ways and implied easements were created. We're dealing with State lands in this part of the process and protecting these right-of-ways and easements. We need Montana to recognize that these easements and right-of-ways do exist. My members feel it is a duty of the State of Montana to protect the rights of private property owners who have vested rights and interests in private property. They should continue to have unimpeded ingress and egress to their property.

Bob Bugni, Prickly Pear Sportsmen stand in support of **HB 352**.

Access is our members' number one issue. If we can't access our public lands, the value of the public is greatly reduced.

(Change Tape) It's very difficult to stay abreast with all the petitions to abandon county roads. Each county does it their own way and notices the public in different ways.

L. F. Thomas, Anaconda Sportsmen, Deer Lodge County Commissioners had the foresight to go on record as not abandoning any more county roads. I hope this committee does the same.

Stan Frasier, Montana Wildlife Federation, One of our primary concerns is access to public lands. Roads are important to all of us. There has been many cases where at the request of perhaps one individual, two county commissioners can concur and close access to everybody.

{Tape : 2; Side : A; Approx. Time Counter : 4.30}

Opponents' Testimony:

John Mundinger, Montana Stock Growers Assoc., Montana Cattlegrowers, Sections 1 and 2, subsections 4 and sections 3 and 4 are just fine. We concur with several things the proponents of this bill said. We have no problem with maintaining public access to public land. However, we have a serious problem with intending to transfer the burden of responsibility for maintaining public access to public lands from the public to the private sector. That's what we think happens on lines 6 and 7 and lines 17 and 18 on page 2.

When landowners petition for closure of county roads or county right-of-ways, they're doing so because the county has de facto ceased to maintain those roads. The burden of responsibility for maintaining those roads for weed control, concern about trespass on private land, and concerns about liability all fall on the private landowner. If you want to prevent the county from abandoning county roads and county right-of-ways, you have to include in this measure some kind of funding source so the counties can keep those roads open or require they work with a federal agency. If the Forest Service wants to keep that road open, let the Forest Service sit down with the county and pick up responsibility for maintaining the road. But don't put that burden of responsibility on the private landowner.

Questions from Committee Members and Responses:

SENATOR HOLDEN On page 2, line 6 and 7, it seems like an incredible stretch for you to say that private landowners are going to be responsible for county roads that aren't closed.

John Mundinger Private landowners petition to close them because the counties aren't maintaining them. In the one in Powder River County one of the proponents referenced, that's basically what happened. Ten landowners petitioned to close that road because it wasn't being maintained. BLM didn't want to pick up the responsibility for it and the road crossed private land. It's when you have a county road on private land accessing public land

that is not being maintained with public resources that we have concern.

SENATOR HOLDEN Wouldn't the county roads that exist there already have a county road easement through that private land?

John Munding Yes, and if the county is maintaining the road, there's not a problem.

SENATOR HOLDEN If the county is not maintaining the road but the county is using it for access, why would the private landowner ever think he would have to do anything other than what he's done for the last 100 years.

John Munding If it's a road, it's probably not a problem. If it's a two track trail it probably is.

SENATOR HOLDEN If it's a two track trail, why is it probably a problem?

John Munding You have concern with potential trespass off that trail, concerns for liability because the road is not being maintained, concerns for weed control, all of which are county responsibilities if it's a county road. If it's not being addressed by the county, who's responsible for it?

SENATOR HOLDEN You talked about trespass off a county road. Doesn't that exist anywhere in Montana at anytime?

John Munding Again the concern is whether or not the county thinks it's a road and if they are taking care of their situation. I'm not advocating circumstances like Mr. Holdorf described down at Dillon, for example. If you have a legal road and somebody is illegally closing it, that's a problem that needs to be addressed.

SENATOR HOLDEN I've defended landowners by way of their personal liability insurance policies for fourteen years. I don't see the liability in having a county road through your property.

John Munding Your client still had to go to court, didn't he? Even though you were successful in defending him?

SENATOR HOLDEN I've never had that sort of a case.

John Munding I'm sharing with you the concerns of my clients with this bill.

SENATOR MESAROS I'm not familiar with the process of abandoning county roads, but if I recall correctly, it takes a certain amount of signatures of the surrounding landowners to petition the county to abandon it. Isn't this more of a local issue for counties to respond to in managing their roads? I'm referring to page 2, lines 6 and 7 that says by statute that county road, if they abandon one they have to build another or provide access. Isn't this addressed through the public hearing process that the counties are required to go through on a local level?

REP. BRAINARD As I understand the abandonment process, generally a petition is brought to the county by landowners at a terminating point of the road. They petition that portion of the road be closed and there can be a hearing. If you take a look at lines 8 and 9, we're talking abandonment when the road goes to private land. Essentially what we're doing here is providing, if all those landowners agree to the petition of closure of the road that services private land, indeed it can be closed and will become a private road.

The issue we're talking about regarding public lands is the point where some of the adjoining landowners on the county road that does go to public land have decided yes, we would like to petition to have this road close and thereby deny the public access to public land, in effect shutting off that portion of public land. Let's say that road is not a particularly good road and as Mr. Munding was talking about, might be a track or something that hasn't been maintained. If indeed another road has been built that services the same area but from a different angle, then they can shut down the one road and the other road does substantially the same thing.

I would suggest these county roads have received state gas money. Every county sends a register of their rural roads to the Dept. of Transportation. In the basement of the Transportation Building they have a stack of maps of the county roads that receive state gas tax money to maintain county roads. Likewise the counties also get money from the Payment In Lieu of Tax payments that are supposed to go into maintaining rural roads as well.

SENATOR EKEGREN I abandoned a road. In the process of doing so, I petitioned the County Commissioners and then we advertised for three or four weeks to see if there was any opposition. I was always under the impression if there were right-of-ways in existence for X amount of years, if they were used they couldn't be taken away. Apparently that's not true. No matter how we think of Ted Turner, I can't imagine he has any more influence on

the closing of roads than anybody else. Obviously the fact the road has been in existence for years and years doesn't give it any credence to stay in existence.

REP. BRAINARD For example, if a county road is abandoned, it goes back to the adjacent landowners. If that road passes through a single block of land owned by one individual, that easement would go back to the landowner. If you had two landowners, one on each side of the road, I'm assuming that half would go to each. An interesting sidelight would be, what about the county road that passes through federal land, what happens if the Federal Government petitions to abandon it? It comes to the same question. At what point along the road may somebody petition to close it?

SENATOR EKEGREN If those roads are in existence and somebody petitions to close them, does it have to be property owners that oppose it, or can sportsmen who want to access public lands also oppose?

REP. BRAINARD As I understand it, the abandonment of the county road is the decision that is made by the county and there would be no existing easement or right to that right-of-way once it was abandoned by the county. That would be different than a prescriptive easement where there has been an easement across private land. That is a continuing legal entity to be defended in court, not necessarily by law but more by court cases and court precedent. In effect, if the county road is abandoned, that access to the public land has been cut off.

SENATOR EKEGREN Were they abandoned in the past or are they being abandoned now by the counties.

REP. BRAINARD We are talking about current open roads that could be abandoned or have been petitioned recently and abandoned. This is not a historic situation, it is on-going and one we need to guard against in this state if we want to keep our arteries of commerce open.

SENATOR EKEGREN When I abandoned my road twenty years ago, I had to advertise in the paper for three weeks waiting for opposition to my abandoning that road. What would happen in this case?

REP. BRAINARD You're looking at two out of three votes of the county commissioners. Just because there's opposition in the hearing doesn't mean you win the day.

SENATOR BECK There's a difference between a county road and a public road. Would this county road have to connect to public land. If it didn't connect to public land, would it still be eligible to be abandoned?

REP. BRAINARD The way this bill is drafted, the county road has to access public land. The public land would be a terminus point. If you have a situation where the county road that has been dedicated to a county ends at a person's private property and there has not been a county road that goes through to public land and this will not create an easement or right-of-way across that private property, where that road is now just keeps that road in existence.

SENATOR BECK A lot of county roads went to private property and then they stopped. There would be a public road going on up to actually get to the public land. It's that stretch right in there that's a real question. I wanted to make sure your understanding is that the county road will actually access the public land.

SENATOR HOLDEN On page 1, section 1 you're talking about state land, school land. In section 2 you're talking about what the county commissioners are doing about granting right-of-ways. I'm looking at page 1, line 15 where you're talking about the board, I'm not sure which board you're talking about.

Doug Sternberg I believe the Board of Land Commissioners. That section one has been going to the State Land Code.

SENATOR HALLIGAN Is a non-exclusive easement defined somewhere?

REP. BRAINARD In the Highway Committee Executive Action on this, **REP. TREXLER** amended this bill because the concept of right-of-way is an actual owning of the property. There was some concern if you purchased the right-of-way across the state property, would you then own that actual physical land as the right-of-way and be able to keep other individuals off who might be on state land. The committee amended this with the term non-exclusive easement. You would have that permanent easement for use to your property, but it does not give you the ability to keep people off that state property.

SENATOR HALLIGAN There's a difference between a county road and a public road.

REP. BRAINARD I believe the definition under the highway section we have in the code, there is a definition of public road which

is a publicly traveled way that may or may not be a county road. There are some gray areas and I believe our code is lacking in definition regarding some of these issues. We're not really up to date on some of our definitions and probably need some more legislation in the future on that. You notice there is not discussion of a public road in this. We're talking strictly about a county road that accesses public land.

SENATOR HALLIGAN On the amendment, I'm trying to see what was placed in here by the Committee or on the Floor. It looks like page 2, line 9, "unless all the landowners agree", was placed down on line 20.

REP. BRAINARD It was a Floor amendment. **REP. ANDERSON** had some concerns about being able to close a private road that serviced nothing but private property. We changed the way that read in the Committee.

SENATOR BECK I question the need for Section 2. I didn't think counties owned much land and didn't think this would be much of a problem. Is it a problem in some areas?

REP. BRAINARD Missoula County has land we are selling. There are occasions possibly where counties require open space. I understand certain parts of this state would not be able to fathom why a county would want to purchase open space. There are counties and cities that want open space and this is used to address some of those situations where you might have an easement going across county property. To my knowledge there's nothing that requires a county to give a permanent easement. If that easement to your private property is the only way you can access it and you cannot clearly define that you own that easement and have a legal right to it in perpetuity, trying to do any development or using that as collateral on a loan, the banks won't do it. People have told me if you don't have guaranteed access, you don't get any money out of it.

SENATOR BECK If you have a prescriptive easement, you've got the right to go to and from your property but you don't have a set easement? If I've had that for years, now we're talking public road to a certain extent or is this private road that this goes to and I can get that easement across state land.

REP. BRAINARD You cannot have a prescriptive easement across state land. You do not have a legal right as you would across private land. You would have perhaps a historic easement, but it's not guaranteed to you. Let's say the county road ends at the state property line and there is a FWP road through there

which you use for access. Under this scenario, you would have a permanent easement on that road, from the county road across the state land to your property. But you would not own it in the sense you could stop the public from going on that road until they got to your property.

SENATOR BECK I would have a permanent easement, non-exclusive just to me.

REP. BRAINARD The exclusive easement would set up a condition where you control the easement to any other traffic. This says you have the easement for your use, but you do not have the exclusive easement on that road as it is being maintained by FWP or whoever.

SENATOR BECK This would be great for a private road, too, just to get to and from my own property. Say I had to go across somebody else's property plus a state section, but yet it's somewhat of a private road.

REP. BRAINARD Exactly. You might have a situation in some of these places where you have a prescriptive easement across a piece of private property to your property and you're crossing state property in between. At the present time you do not have a legal right to that state property. This would give you the extension, then, and actually give you that legal right.

SENATOR BECK Does the word non-exclusive make it a public road?

REP. BRAINARD It wouldn't in this sense because of your prescriptive easement across the private property. That private property owner stops anyone else.

Closing by Sponsor:

Rep. Brainard If you take a look at the name of the sponsors on here, I don't think you'll find us hostile to agriculture or private property rights. If you do pass it through your Committee, **SENATOR TAYLOR** will probably carry it.

{Tape : 2; Side : A; Approx. Time Counter : 5.02}

(Recorder turned off while waiting for REP. MCCANN)

HEARING ON HB 571

Sponsor: **REPRESENTATIVE MATT MCCANN, HD 92, HARLEM**

Proponents: **Mike Murphy, Montana Water Resource Assoc.**

Opponents: **NONE**

Opening Statement by Sponsor:

REPRESENTATIVE MATT MCCANN, HD 92, The bill itself sits on lines 16, 17 and 18. It is new language to existing statute. There are irrigation districts across the state that use a Joint Board of Control. This Joint Board of Control is an organization that one member from each district can participate in. In statute it says the member must be a landowner. This new language is amending that to say "a person representing an entity that uses water". We have a compact coming up in the Milk River Basin. We'd like to be able to include the Fort Belnap Indian Reservation. That's one possibility; the other possibility is there are people pulling water out of the Milk River and irrigating who do not belong to an irrigation district. We are trying to get these people to organize and participate in the Joint Board of Control so that we all are on the same basis of usage and communication.

Proponents' Testimony:

Mike Murphy, Montana Water Resources Assoc. This is a very simple bill that changes the status of membership for the member at large in regards to the Joint Board of Control. We feel this should help facilitate the establishment of the Joint Board of Control that the irrigation districts up on the Milk River are working on. Our concern was to insure that the bill wouldn't jeopardize any of the existing Joint Boards of Control throughout the state. We do not feel this bill jeopardizes them and in fact we look at this as an improvement over existing provisions. John Metropolis from the Flathead Joint Board of Control asked that I indicate support on their behalf.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 5.08}

Questions from Committee Members and Responses:

SENATOR HOLDEN What specifically was the reason you wanted to redo this?

REP. MCCANN As Joint Board of Control currently exists, you had to be a landowner in order to be part of the Joint Board of Control. This language says "can be a person or entity that

receives water from the irrigation project". That language for this one person changes it to where you wouldn't necessarily have to be a landowner, in the example of an Indian Reservation who owns the land. They can send someone to participate in the Joint Board of Control.

SENATOR HOLDEN If you're a renter on an irrigation project, you might own dry land up in the hills but rent irrigated property, use the water and have as much interest in the usage as any other farmer in that irrigation project. You're allowing that person to be on the board.

REP. MCCANN One person.

SENATOR BECK Is this a paid position?

REP. MCCANN No.

Closing by Sponsor:

REP. MCCANN The Flathead does have a Joint Board of Control and they support this proposal as well. It's not like we've come in here and are tinkering with a law that's going to adversely affect somebody else.

EXECUTIVE ACTION ON HB 571

Motion/Vote: **SEN. JERGESON** moved that **HB 571 BE CONCURRED IN.**
Motion carried unanimously. SENATOR JERGESON will carry.

ADJOURNMENT

Adjournment: 4:32 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags50aad)